SUPPLEMENTARY INFORMATION: In the Federal Register of March 26, 1990 (55 FR 11012), FDA published the approval of supplemental NADA 130-736 filed by Elanco Products Co., a division of Eli Lilly and Co., Lilly Corporate Center, Indianapolis, IN 46285. The supplement provides for the continuous feeding of monensin for treatment of coccidiosis in turkeys. The approval regulation provided for the use of 45 gram-per-pound monensin Type A medicated article for manufacture of the Type C medicated feed. Following publication, the firm pointed out that NADA 130-736 incorporated information from NADA 38-878 which also provided for the use of a 60 gram-per-pound monensin Type A medicated article and therefore, the published approval should have also provided for use of the 60-gram-per-pound Type A medicated article. Upon further review, the agency agrees, and therefore is publishing a correction.

The freedom of information summary and the environmental assessment which were made available at the time of the approval of the supplemental apply to both concentrations of the medicated article. Similarly, the 3 years of exclusive marketing which was granted effective March 26, 1990, applies to both concentrations of the medicated article.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

2. Section 558.355 is amended by revising paragraphs (b)(4), (b)(5), (b)(6), (b)(7), (b)(8), (b)(9), (b)(11), and (b)(12) to read as follows:

§ 558.355 Monensin.

* * * * *

(b) * * *

(4) To 000986: 45 and 60 grams per pound, as monensin sodium, paragraph (f)(2) of this section.

(5) To 000007: 45 and 60 grams per pound, as monensin sodium provided by No. 000986, paragraphs (f)(1)(xiii), (f)(1)(xx), and (f)(1)(xxi) of this section.

(6) To 000986: 45 and 60 grams per pound, as monensin sodium, paragraph (f)(5) of this section.

(7) To 000986: 20, 30, 45 and 60 grams per pound, as monensin sodium, paragraph (f)(3) of this section.

(8) To 010042: 45 and 60 grams per pound, as monensin sodium provided by No. 000986, paragraph (f)(1)(xiv) of this section.

(9) To 011716: 45 and 60 grams per pound, as monensin sodium provided by No. 000986, paragraphs (f)(1)(xv), (xvi), and (xvii) of this section.

* * * * *

(11) To 046573: 45 and 60 grams per pound, as monensin sodium provided by No. 000986, paragraphs (f)(1)(xviii), (xix), (xxiii), and (xxiv) of this section.

(12) To 000069: 45 and 60 grams per pound, as monensin sodium provided by No. 000986, paragraph (f)(1)(xxii) of this section.

* * * * *

Dated: October 3, 1990.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation Center for Veterinary Medicine.

[FR Doc. 90-25041 Filed 10-22-90; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8317]

RIN 1545-AP12

Minimum Funding Requirements—Plan Restoration

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that add a new § 1.412(c)(1)-3T to the regulations governing the minimum funding requirements for qualified plans under section 412 of the Internal Revenue Code. The temporary regulation supplements the existing regulations by providing rules for the treatment of plans that are being or have been terminated pursuant to section 4041(c) or 4042 of and are restored to their sponsoring employers by order of the Pension Benefit Guaranty Corporation ("PBGC") pursuant to section 4047 of the Employee Retirement Income Security Act of 1974 ("ERISA"). The temporary regulation was developed simultaneously with a new regulation issued by the Pension Benefit Guaranty Corporation under section 4047 of ERISA.

These rules are needed because plan restoration raises unique issues under section 412 but the existing regulations do not provide guidance for the treatment of the funding standard account of a restored plan. The funding standard account of a plan that has been restored must be reestablished because the funding standard account of the plan will have been closed out at the time of termination and there will generally be a hiatus during which no contributions will have been made to the plan.

The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking published in the proposed rules portion of this issue of the **Federal Register**. These regulations will provide the public with guidance necessary to comply with the law. They will affect sponsors of and participants in tax-qualified retirement plans.

EFFECTIVE DATE: The regulations are effective October 23, 1990, and thus apply for the plan valuation for the first plan year beginning on or after the later of October 23, 1990, or the date of a PBGC restoration order applicable to the plan.

FOR FURTHER INFORMATION CONTACT: Michael J. Roach at telephone 202-566-6260 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document adds new § 1.412(c)(1)-3T to part 1 of title 26 of the Code of Federal Regulations. The document addresses the relationship between the funding requirements of section 412 of the Internal Revenue Code and the restoration provisions of section 4047 of the Employee Retirement Income Security Act of 1974 ("ERISA"). The relationship between the minimum funding requirements of section 412 and the restoration provisions of section 4047 of the Employee Retirement Income Security Act of 1974 ("ERISA") is one aspect of a long history of statutory interrelationship and coordination that has characterized the development of pension law in this area since the enactment of ERISA. The plan termination insurance program administered by the Pension Benefit Guaranty Corporation ("PBGC") for the protection of participants in defined benefit plans is one of the cornerstones of the congressional policy underlying ERISA. See H.R. Rep. No. 93-807, 93d Cong., 2d Sess., 13. The establishment of a program of plan termination insurance is predicated on the existence of adequate minimum funding requirements to assure that employers will, in general, fund their pension obligations in a timely manner. During the legislative development of ERISA, Congress reviewed the minimum funding requirements of pre-ERISA law and found them inadequate because, *inter alia*, they did not require the sponsor of a qualified defined benefit plan to contribute sufficient amounts to amortize the principal amount of the unfunded past service liabilities of the plan. H.R. Rep. No. 93–807, 93d Cong., 2d Sess., 73–74.

Accordingly, as part of the overall reform of the pension laws in ERISA, Congress raised the minimum funding standards applicable to qualified plans and required plans to establish and maintain a funding standard account to protect plan participants and the plan termination insurance program. The charges and credits to the funding standard account are prescribed in section 412(b) of the Internal Revenue Code. Additional minimum funding provisions requiring employers to make deficit reduction contributions were added with the enactment of section 412(l) of the Internal Revenue Code as part of the Omnibus Budget Reconciliation Act of 1987 ("OBRA 1987"), Public Law No. 100–203. This additional funding requirement was adopted in substantial part to protect the plan termination insurance system administered by the PBGC from large claims resulting from the termination of underfunded plans. H.R. Rep. No. 100–391 (Vol. II), 100th Cong., 1st Sess., 984.

Section 4047 of ERISA authorizes the PBGC to restore a terminated pension plan to its sponsoring employer whenever the PBGC determines that this action is appropriate and consistent with its duties under title IV of ERISA. In any case in which the PBGC determines that a plan that is being terminated should be restored, it is authorized under section 4047 "to cease any activities undertaken to terminate the plan, and to take whatever action is necessary and within its power to restore the plan to its status prior to the determination that the plan was to be terminated." Similarly, in the case of a plan that has been terminated, the PBGC is authorized in any case in which it determines this action to be appropriate and consistent with its duties under title IV, "to take such action as may be necessary to restore the plan to its pretermination status, including, but not limited to, the transfer to the employer or a plan administrator of control of part or all of the remaining assets and liabilities of the plan."

The legislative history of section 4047 of ERISA demonstrates that Congress intended to confer broad authority on the PBGC to control the details of plan restorations. The purpose of section 4047 is explained as follows in the conference report to ERISA (H.R. Conf. Rep. No. 93–1280, 93d Cong., 2d Sess. 378–379:

Restoration of plans

Neither the House bill nor the Senate amendment had any specific provision that procedures against a plan in the termination phase might be abandoned by the corporation if the employer and plan enjoyed a favorable reversal of business trends, or if some other factor made termination no longer advisable.

Under the conference substitute, the corporation may cease any termination activities and do what it can to restore the plan to its former status. As a result, a terminated plan being operated by a trustee as a wasting trust may be restored if, during the period of its operation by the trustee, experience gains or increased funding make it sufficiently solvent. The corporation may, when appropriate, transfer to the employer or plan administrator part or all of the remaining assets and liabilities.

The United States Supreme Court recently upheld the broad authority of the PBGC to restore a pension plan in *PBGC* v. *LTV Corp.*, 110 S.Ct. 2668 (1990).

The restoration of a pension plan presents unique problems with respect to the application of the minimum funding standards of section 412 of the Internal Revenue Code because a restored plan is being or has been terminated and administered as a terminated plan during the time from the date of termination of the plan to the date of the restoration (or its implementation). During this interval, the funding standard account will have ceased to apply to the plan beginning with the plan year subsequent to the year in which the termination occurred. See Rev. Rule 79–237, 1979–2 C.B. 190. In addition, during the period between the dates of termination and restoration (or its implementation), Schedules B of Form 5500 will not have been completed by the plan actuary, nor will contributions have been made to the plan. When the PBGC acts to restore the plan, the funding standard account must be reestablished and thereafter the funding standard account must be maintained.

The restoration of the plan under section 4047 of ERISA has the effect of retroactively reinstating benefit accruals under the plan because the statute provides for restoration of the plan to its pre-termination status. Because the plan will have been underfunded upon plan termination and because the plan sponsor will ordinarily not have made any contributions to the plan while it was being administered as a terminated plan, the plan is likely to be even more underfunded on restoration. This underfunding will be significantly increased if the plan has been administered as a terminated plan for an extended period of time.

Congress has recognized that, in certain limited cases, the Secretary may by regulation adapt the standards of section 412 to the extent necessary to provide rules for a special group of plans. Thus, for example, Congress expressed its intent to provide flexibility in computing funding requirements for a collectively bargained plan if the collective bargaining agreement under which the plan was funded required the employers contributing to the plan to pay a fixed amount per unit of service or production and if the employers complied with their obligations under the agreement. H.R. Rep. No. 93–1280, 93d Cong., 2d Sess., 285. In order to provide a mechanism for computing the minimum funding requirements based on estimated units of service or production in the case of collectively bargained plans, the Secretary promulgated the shortfall method in § 1.412(c)(1)–2 of the Treasury Regulations. T.D. 7733, 1981–1 C.B. 234.

The rules in these temporary regulations apply to a plan that is being or has been terminated and restored by the PBGC and they provide a restoration method for funding the unfunded liability of the plan that is attributable to plan years prior to the later of the restoration or its implementation. Under this method, the required funding level for these liabilities is established by the PBGC in a restoration payment schedule order for a period that may be as long as 30 years after the beginning of the plan year in which the initial post-restoration valuation date falls.

Establishment of the restoration payment schedule by the PBGC is appropriate because the PBGC will normally have detailed knowledge of the financial condition of the plan sponsor (and its controlled group) of a restored plan, because the PBGC is directly at risk if restoration is ultimately unsuccessful and a restored plan must be re-terminated. It is also appropriate and essential to the effective administration of section 412 that the Secretary prescribe certain limits with respect to the restoration funding schedule in order to ensure that the schedule is consistent with and in furtherance of the congressional purposes underlying section 412.

Explanation of Provisions

Appropriate provisions for the amortization of the large unfunded liability arising, in part, as a result of the lapse of time between the termination of a plan and the resumption of contributions to it are necessary to implement the PBGC's restoration authority. These regulations provide parameters within which the PBGC shall establish a restoration payment schedule consistent with the orderly restoration of the plan.

The regulations create a special funding method, known as the restoration method, which method adapts the underlying funding method used by the plan to the special circumstances that exist when a plan is restored. The restoration method is applicable only to plans that are being or have been terminated and are then restored by the PBGC. When the PBGC establishes a restoration payment schedule, the Executive Director of the PBGC must certify to the Corporation's Board of Directors, and to the Internal Revenue Service, that the Corporation has reviewed the funding of the plan, the financial condition of the plan sponsor and its controlled group members, the payments required under the restoration payment schedule (taking into account the availability of the deferrals permitted under the temporary regulations), and any other factor that the Corporation deems relevant, and, based on that review, determines that it is in the best interests of participants and beneficiaries of the plan and the pension insurance program that the restored plan not be reterminated.

A plan that is being or has been terminated and restored, must use the restoration method until the initial restoration amortization base has been fully amortized. Use of the restoration method is permitted without securing prior approval from the Commissioner.

For purposes of applying the restoration method, § 1.412(c)(1)–3T(b) of the regulations creates a special amortization base, known as the initial restoration amortization base, consisting of the unfunded liability of the plan as of the valuation for the plan year in which the initial post restoration valuation date falls, based upon the assets and liabilities restored by the PBGC. This initial restoration amortization base must be amortized over not more than 30 years. During this period, the plan sponsor and any controlled group members must contribute an amount sufficient to satisfy the requirements of section 412 taking into account the plan restoration provisions of this regulation § 1.412(c)(1)–3T. At the end of the period established by the restoration payment schedule, the plan is required to comply with the minimum funding requirements of section 412 of the Internal Revenue Code in the same manner as a plan that had never been terminated and restored.

The PBGC must issue a restoration payment schedule order using the initial restoration amortization base. The factors that the PBGC may consider in prescribing a restoration payment schedule to amortize the initial restoration amortization base include but are not limited to the following: (1) The need for the plan to make an orderly transition from terminated status to ongoing status as a restored plan, and (2) the need for the plan sponsor and its controlled group members to have sufficient time to fund the accrued liabilities of the plan arising from prerestoration service, (3) the interests of plan participants and beneficiaries, (4) the financial condition of the plan, (5) the financial condition of the plan sponsor and its controlled group members, (6) changes in the law affecting the funding requirements applicable to the restored plan, (7) the length of time between the date the plan was terminated and the date of a PBGC restoration order, its implementation, or the restoration payment schedule order, (8) the grounds for the restoration, (9) the risk to the PBGC's plan termination insurance program, and (10) the pre-termination funding history of the plan.

The restoration payment schedule must provide that at the end of no more than 30 years, the entire amount of the initial restoration amortization base will have been amortized. Unlike the amortization bases described in section 412(b) of the Internal Revenue Code, however, the amortization charges need not be in level annual amounts. Nevertheless, at all times the present value of the future amortization charges under the restoration payment schedule must equal the outstanding balance of the initial restoration amortization base and the schedule must provide that at the end of no more than 30 years the entire amount of the initial restoration amortization base will have been fully amortized.

In addition, any restoration payment schedule established pursuant to these regulations must meet certain minimum annual payments and must satisfy certain interim amortization requirements. Under these regulations, the restoration payment schedule must provide for sufficient periodic charges so that the outstanding balance of the initial restoration amortization base at the end of the tenth plan year and at the end of the twentieth plan year of the restoration payment period will not be larger than the outstanding balances that would have remained at the end of the tenth plan year and at the end of the twentieth plan year, respectively, if the initial restoration amortization base had been amortized in level amounts over the restoration payment period. In addition, during each 10-year interval, the restoration payment schedule must require payments that are sufficient to prevent the outstanding balance of the initial restoration amortization base from exceeding the balance at the beginning of the interval.

As is the case with other bases used to amortize unfunded costs of a plan, the charges required under the restoration payment schedule prescribed by the PBGC are charged to the funding standard account of the plan in the year each payment is due. In the event that the plan sponsor or its controlled group members makes contributions in excess of those required, the resulting credit balances will be available to satisfy the charges in subsequent plan years.

The outstanding balance of the initial restoration amortization base must be calculated each year in conformity with the usual actuarial practice applicable to other amortization bases established under section 412(b) of the Internal Revenue Code. In determining the outstanding balance of this base, however, the calculation must be based upon the charges under the restoration payment schedule. Under the regulations, the Pension Benefit Guaranty Corporation may grant a deferral of the payment required under the restoration payment schedule for a particular year, under the conditions and in the manner provided in the regulations.

The normal operation of the funding standard account, and the other provisions of section 412 and the regulations thereunder, are unchanged except as provided in this plan restoration regulation § 1.412(c)(1)–3T. If the actuarial assumptions and methods used in calculating the assets and liabilities of the plan are changed consistent with requirements of section 412(c)(3), and if the change results in a net change to the scheduled payments required to amortize the outstanding balance of the initial restoration amortization base over the remaining years of the restoration payment schedule, the plan must notify the PBGC of the changes so that the PBGC can make any necessary changes to the restoration payment schedule.

When a plan is under the restoration method, the deficit reduction contribution under section 412(l)(2) of the Internal Revenue Code is composed of the unfunded section 412(l) restoration liability amount plus the unfunded new liability amount. The unfunded section 412(l) restoration liability amount is the amount necessary to amortize the section 412(l) restoration liability in annual installments, not necessarily level, as prescribed by the PBGC over a period of not more than 30 years. During the first 10 years after the initial postrestoration valuation date, the computation of the unfunded section 412(l) restoration liability amount must be made at the valuation interest rate, if that rate is lower than the current liability interest rate determined under section 412(b)(5)(B).

The difference between the unfunded section 412(l) restoration liability amount computed at the current liability rate and the unfunded section 412(l) restoration liability amount computed at the valuation rate must be accumulated during the first 10 years with interest at the current liability rate. This accumulated balance must be charged to the funding standard account of the plan at the end of the tenth plan year, but the PBGC may spread the charging of this amount over the eleventh through the fifteenth plan years, by an appropriate order. This rule is designed to give the PBGC a sufficient amount of flexibility in developing an amortization payment schedule under section 412(l) to enable the employer to meet its funding obligations to the restored plan during the years immediately after the restoration. The unfunded new liability amount is the applicable percentage, as determined under section 412(l)(4)(C), of the difference between the unfunded current liability of the plan and the outstanding balance of the section 412(l) restoration liability of the plan. The section 412(b) restoration payment for each year shall be offset against the deficit reduction contribution for that year, along with any other applicable offset amounts, as provided in section 412 (l)(1)(A)(ii).

When the plan uses a funding method that does not maintain an unfunded liability, *e.g.* the aggregate method, the plan must change to a method that does maintain an unfunded liability. A plan may adopt any acceptable method, i.e. any method that maintains an unfunded liability, subject to the procedures established in Rev. Proc. 85-29, 1985-1 C.B. 581, as extended by Notice 90-63 (October 22, 1990), I.R.B. 43.

The PBGC retains the authority to modify the restoration payment schedule at any time during the period of up to 30 years that the schedule is effective. Any modification must, however, comply with the requirements of the regulation, including the minimum payment requirements and the requirement that the 30-year period not be extended. In addition, the PBGC may conduct a funding review of the plan at any time it deems appropriate. The purpose of a funding review is to determine the progress that the plan is making toward the establishment of an adequate level of funding, to make appropriate adjustments in the restoration payment schedule, and to assure an orderly transition when the restoration method ceases to apply. As part of the annual funding review, the Executive Director of the PBGC must certify to the Corporation's Board of Directors, and to the Internal Revenue Service, that the Corporation has reviewed the funding of the plan, the financial condition of the plan sponsor and its controlled group members, the payments required under the restoration payment schedule (taking into account the availability of the deferrals allowed under the temporary regulations), and any other factor that the Corporation deems relevant, and, based on that review, determines that it is in the best interests of participants and beneficiaries of the plan and the pension insurance program that the restored plan not be reterminated.

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impractical to issue this Treasury decision with notice and public procedure under subsection (b) or section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Effect on Other Laws

Pursuant to the Reorganization Plan No. 4 of 1978, satisfaction of the restoration method requirements set forth in these regulations will be treated as satisfaction of the minimum funding requirements under section 302 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (ERISA). Failure to make a required payment under the restoration method may be treated by the Secretary of Labor as a failure to meet the minimum funding standard under ERISA section 302 for purposes of the notice required under ERISA section 101(d).

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore, a Regulatory Flexibility Analysis is not required.

Drafting Information

The principal author of these temporary regulations is Michael J. Roach of the Office of Assistant Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. However, other personnel from the Service and the Treasury Department participated in developing the regulations, on matters of both substance and style.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805; * * *.

Par. 2. The following new section is added to part 1 in the appropriate place to read as follows:

§ 1.412(c)(1)-3T. Applying the minimum funding requirements to restored plans (Temporary).

(a) *In general*—(1) *Restoration method.* The restoration method is a funding method that adapts the underlying funding method of section 412 in the case of certain plans that are or have been terminated and are later restored by the Pension Benefit Guaranty Corporation. The normal operation of the funding standard account, and all other provisions of section 412 and the regulations thereunder, are unchanged except as provided in this § 1.412(c)(1)-3T. Under the restoration method, the Pension Benefit Guaranty Corporation shall determine a restoration payment schedule, extending over no more than 30 years, that replaces all charges and credits to the funding standard account attributable to pre-restoration amortization bases. The restoration payment schedule is determined on the basis of an actuarial valuation of the accrued liability of the plan on the initial post-restoration valuation date less the actuarial value of the plan assets on that date. The initial post-restoration valuation date is the date of the first valuation that falls in the first plan year beginning on or after the later of October 23, 1990, or the date of the restoration order.

(2) *Applicability of restoration method.* A plan must use the restoration method if, and only if:

(i) The plan is being or has been terminated pursuant to section 4041(c) or section 4042 of the Employee Retirement Income Security Act of 1974 (ERISA), and

(ii) The plan has been restored by the Pension Benefit Guaranty Corporation pursuant to its authority under section 4047 of ERISA.

(b) *Computation and effect of the initial restoration amortization base*—(1) *In general.* The initial restoration amortization base is determined under the underlying funding method used by the plan. When the plan uses a spread gain funding method that does not maintain an unfunded liability, the plan must change either to an immediate gain method that directly calculates an accrued liability or to a spread gain method that maintains an unfunded liability. A plan may adopt any cost method that satisfies this requirement and that is acceptable under section 412 and the regulations thereunder, provided that the plan follows the procedures established by the Commissioner for changes in funding methods. The initial restoration amortization base is determined using the valuation for the plan year in which the initial post-restoration valuation date falls. The initial restoration amortization base equals the accrued liability with respect to plan benefit liabilities returned by the Pension Benefit Guaranty Corporation less the value of the plan assets returned by the Pension Benefit Guaranty Corporation. The initial restoration amortization base replaces all prior amortization bases including those under subparagraphs (B), (C), and (D) of section 412(b)(2) and under subparagraph (B) of section 412(b)(3). Any base resulting from a change in funding method is treated as a prior amortization base within the meaning of this paragraph (b). Any accumulated funding deficiency or credit balance in the funding standard account is set equal to zero when the initial restoration amortization base is established.

(2) *Example.* A pension plan uses the calendar year as its plan year, makes its annual periodic valuation as of January 1, and uses the unit credit actuarial cost method for funding purposes. The plan is in the process of being terminated. By order of the Pension Benefit Guaranty Corporation the plan is restored as of July 1, 1991, and a restoration payment schedule order issued on October 31, 1992. The initial post-restoration valuation date is January 1, 1993. If, as of that date, the accrued liability of the plan is $1,000,000 and the value of the plan assets is $200,000, the initial restoration amortization base is $800,000.

(c) *Establishment of a restoration payment schedule*—(1) *Certification requirement.* When the PBGC establishes a restoration payment schedule, the Executive Director of the PBGC must certify to the Corporation's Board of Directors, and to the Internal Revenue Service, that the Corporation has reviewed the funding of the plan, the financial condition of the plan sponsor and its controlled group members, the payments required under the restoration payment schedule (taking into account the availability of deferrals authorized under paragraph (c)(4) of this section), and any other factor that the Corporation deems relevant, and, based on that review, determines that it is in the best interests of participants and beneficiaries of the plan and the pension insurance program that the restored plan not be reterminated.

(2) *Requirements for restoration payment schedule*—(i) *Amortization of base over period of no more than 30 years.* The restoration payment schedule must be prescribed in an order requiring the employer to make stated contributions to the plan sufficient to amortize the initial restoration amortization base over a period extending not more than 30 years after the initial post-restoration valuation date (the restoration payment period). The restoration payment schedule must be sufficient to amortize the entire amount of the initial restoration amortization base by the end of the restoration payment period. The scheduled charges need not be in level amounts, but the present value of the prescribed charges on the initial post-restoration valuation date, computed with interest at the valuation rate, must equal the initial restoration amortization base.

(ii) *Minimum annual charge.* The restoration payment schedule must require annual charges that are sufficient to prevent the outstanding balance of the initial restoration amortization base from exceeding whichever of the following amounts is applicable:

(A) During the first 10 plan years on the restoration payment schedule, the amount of the initial restoration amortization base on the date the base was established, or

(B) During plan years 11 through 20 on the restoration payment schedule, the maximum permitted outstanding balance of the initial restoration amortization base at the end of the tenth plan year, as calculated under paragraph (c)(2)(iii) below, or

(C) During plan years 21 through the end of the restoration payment schedule, the maximum permitted outstanding balance of the initial restoration amortization base at the end of the twentieth plan year, as calculated under paragraph (c)(2)(iii) below.

(iii) *Interim amortization requirements.* The restoration payment schedule must provide for sufficient periodic charges so that the outstanding balance of the initial restoration amortization base at the end of the tenth plan year and at the end of the twentieth plan year of the restoration payment period will not be larger than the outstanding balance that would have remained at the end of the tenth plan year and at the end of the twentieth plan year, respectively, if the initial restoration amortization base had been amortized in level amounts over the restoration payment period at the valuation rate.

(3) *Amendments to the restoration payment schedule.* The order establishing the restoration payment schedule may be amended by the Pension Benefit Guaranty Corporation from time to time with respect to any remaining payments, provided that no amendment may extend the restoration payment period beyond 30 years from the initial post-restoration valuation date, and provided further that the restoration payment schedule, as amended, satisfies the requirements of paragraph (c)(2) of this section.

(4) *Deferral of minimum scheduled annual payment amounts*—(i) *Authority to grant deferral.* Not later than 2½ months following the end of the plan year, the Pension Benefit Guaranty Corporation may grant a deferral of the charges required in the restoration payment schedule for that plan year if the requirements in paragraph (c)(4)(ii) of this section are satisfied. The Pension Benefit Guaranty Corporation may require the plan sponsor and its controlled group members to provide security to the plan as a condition to granting a deferral.

(ii) *Determination of business hardship.* Before granting a deferral under this paragraph (c)(4), the Pension Benefit Guaranty Corporation must make a determination that the granting of the deferral is in the best interests of plan participants and the plan termination insurance system, and that the plan sponsor and its controlled group members are unable to make the scheduled restoration payments without experiencing temporary substantial business hardship. In making these determinations, the factors the Pension Benefit Guaranty Corporation shall consider, include, but are not limited to, the following:

(A) Whether the plan sponsor and its controlled group members are operating at an economic loss,

(B) Whether there is substantial unemployment or underemployment in the trades or businesses of the plan sponsor and its controlled group members,

(C) Whether the sales and profits of the industry or industries are depressed or declining, and

(D) Whether it is reasonable to expect that the plan termination insurance system will suffer a greater loss if the plan is terminated than if it is continued as a restored plan.

(iii) *Amount of deferral.* The amount of the deferral for any particular plan year may not exceed the lesser of the amount that would have been required to be contributed under the restoration payment schedule for that year or interest on the outstanding balance of the initial restoration amortization base for that year. An amortization payment for a deferral granted for a prior plan year may not be deferred. No deferral may extend the overall restoration payment period beyond 30 years.

(iv) *Modification of payment schedule.* The restoration payment schedule must be adjusted to reflect any deferral granted for a plan year in the manner prescribed in this paragraph (c). The charge otherwise specified in the schedule is reduced by the amount of any deferral. The charges under the restoration payment schedule for the subsequent plan years are increased by the amounts in paragraph (c)(4)(v) of this section.

(v) *Amortization of deferred amount.* The amount of any deferral granted by the Pension Benefit Guaranty Corporation for any plan year must be amortized in level amounts over five years or such shorter period as may be prescribed by the Pension Benefit Guaranty Corporation, at the valuation rate, beginning with the plan year following the year of the deferral.

(vi) *Number of deferrals permitted.* The Pension Benefit Guaranty Corporation may not grant more than five deferrals of the minimum scheduled payments as required by this section during the restoration payment period and no more than three of these deferrals may be granted during the first ten years of that period.

(d) *Charging the scheduled restoration charges to the funding standard account.* In addition to any other charges and credits prescribed in the normal operation of the funding standard account under section 412, the amount of each charge specified in the restoration payment schedule shall be charged against the funding standard account of the plan for the plan year to which that payment is attributed in the restoration payment schedule.

(e) *Changes in actuarial assumptions.* If changes in actuarial assumptions increase or decrease the charges that would be required to amortize the outstanding balance of the initial restoration amortization base over the remaining years of the restoration payment schedule, the plan must notify the Pension Benefit Guaranty Corporation of the changes so that it may make appropriate changes to the restoration payment schedule.

(f) *Change to restoration method.* A plan that has been restored must use the restoration method until the initial restoration amortization base has been fully amortized. The use of this method does not require prior approval from the Commissioner. A plan using the restoration method must compute the charges and credits to the initial restoration amortization base in accordance with the order of the Pension Benefit Guaranty Corporation and in accordance with this section.

(g) *Deficit reduction contribution*—(1) *Calculation of deficit reduction contribution.* For any plan using the restoration method, the deficit reduction contribution under section 412(l)(2) is equal to the sum of—

(i) the unfunded section 412(l) restoration liability amount, plus

(ii) the unfunded new liability amount.

(2) *Unfunded section 412(l) restoration liability amount.* The unfunded section 412(l) restoration liability amount is the amount necessary to amortize fully the unfunded section 412(l) restoration liability in installments, as prescribed by the Pension Benefit Guaranty Corporation, over not more than 30 years. The annual amount need not be level, but at all times the present value of the future amortization charges under the restoration payment schedule, at the current liability interest rate, must equal the outstanding balance of the unfunded section 412(l) restoration liability and the schedule must provide that at the end of no more than 30 years the entire amount of the unfunded section 412(l) restoration liability base will have been fully amortized. The schedule prescribed for amortization of the unfunded section 412(l) restoration liability must comply with the requirements imposed in paragraph (c) of this section on the restoration payment schedule, except as provided in paragraph (g)(7) of this section and except that the maximum permitted outstanding balance of the unfunded section 412(l) restoration liability at the end of the tenth plan year must not be greater than the outstanding balance of the section 412(l) restoration liability that would have remained at the end of the tenth plan year if the unfunded section 412(l) restoration liability had been amortized in level amounts over the restoration payment period at the current liability interest rate, increased by the current liability interest rate differential as defined under paragraph (g)(7) of this section. The Pension Benefit Guaranty Corporation may amend the amortization schedule for the unfunded section 412(l) restoration liability subject to the limits on amendments to the amortization schedule prescribed for the initial restoration amortization base.

(3) *Establishment of unfunded section 412(l) restoration liability.* In the plan year in which the initial post-restoration valuation date falls, the unfunded section 412(l) restoration liability is equal to the unfunded current liability of the plan.

(4) *Unfunded new liability amount.* In the case of a plan using the restoration method, the unfunded new liability amount is the applicable percentage, as defined in section 412(l)(4)(C), of the unfunded new liability determined under paragraph (g)(5) of this section.

(5) *Unfunded new liability.* The unfunded new liability of a plan using the restoration method is the unfunded current liability of the plan for the plan year less the outstanding balance of the unfunded section 412(l) restoration liability determined under paragraph (g)(3) of this section and less any unpredictable contingent event benefit liabilities (without regard to whether or not the event has occurred).

(6) *Offset of amortization charges.* The charges specified in the restoration payment schedule to amortize the initial restoration amortization base, must be offset against the deficit reduction contribution in paragraph (g)(1) of this section along with any other applicable amounts provided in section 412 (l)(1)(A)(ii).

(7) *Interest rate differential.* During the first 10 plan years after the initial post-restoration valuation date, the unfunded section 412(l) restoration liability amount for the plan as determined for purposes of this section must be sufficient to prevent the outstanding balance of the unfunded section 412(l) restoration liability from exceeding the initial amount of the unfunded section 412(l) restoration liability increased by the current liability interest rate differential. The current liability interest rate differential

at any point during the first ten years of the restoration payment period is the excess if any of the accumulated interest on the unfunded section 412(l) restoration liability amount computed at the current liability interest rate over the accumulated interest on the unfunded section 412(l) restoration liability amount computed at the current liability interest rate for the plan year in which the initial post restoration valuation date falls. The current liability interest rate differential is charged to the funding standard account at the end of the tenth plan year, but the Pension Benefit Guaranty Corporation may, as part of the restoration payment schedule order, or a modification to that order, direct that the charging of this amount must be spread over not more than 5 years, beginning with the eleventh plan year.

(h) *Election of the alternative minimum funding standard.* A plan using the restoration method may not elect the alternative minimum funding standard under section 412(g).

(i) *Funding review by the Pension Benefit Guaranty Corporation.* The Pension Benefit Guaranty Corporation must review the funding of any plan using the restoration method at least once in each plan year. As a result of a funding review, the Pension Benefit Guaranty Corporation may amend the restoration payment schedule as provided in paragraph (c)(3) of this section. As part of the funding review, the Executive Director of the PBGC must certify to the Corporation's Board of Directors, and to the Internal Revenue Service, that the Corporation has reviewed the funding of the plan, the financial condition of the plan sponsor and its controlled group members, the payments required under the restoration payment schedule (taking into account the availability of deferrals authorized under paragraph (c)(4) of this section), and any other factor that the Corporation deems relevant, and, based on that review, determines that it is in the best interests of participants and beneficiaries of the plan and the pension insurance program that the restored plan not be reterminated.

Fred T. Goldberg, Jr.,
Commissioner of Internal Revenue.

Approved: October 15, 1990.

Kenneth W. Gideon,
Assistant Secretary of the Treasury.

[FR Doc. 90-24924 Filed 10-22-90; 8:45 am]

BILLING CODE 4830-01-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[T.D. ATF-303; Ref.: Notice No. 699]

Standards of Fill for Wine; New 500 Milliliter Size (89F124P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: ATF is amending the "standards of fill" regulations to authorize a new bottle size for wine. This will permit wine to be bottled, removed from bond or customs custody, and entered into interstate commerce in containers of 500 milliliters (ml). Formerly, ATF regulations allowed the 500 ml size only for exports and intrastate commerce, but not for interstate commerce. Authorization of this size in interstate commerce will enable the wine industry to respond to consumer demand for an intermediate size betwen 375 ml and 750 ml.

EFFECTIVE DATE: February 20, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Simon, Revenue Programs Division, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue NW., Washington, DC 20226; (202) 566-7531.

SUPPLEMENTARY INFORMATION:

Background

ATF regulations in 27 CFR 4.73 provide metric standards of fill for wine. Including the new 500 ml size, the following standards of fill will be provided: 50 ml, 100 ml, 187 ml, 375 ml, 500 ml, 750 ml, 1 liter, 1.5 liters, and 3 liters. Sizes larger than 3 liters are permitted if they are in even-liter quantities (4 liters, 5 liters, 6 liters, etc.). Containers of 18 liters or more are not subject to the standards of fill, but the net contents of such containers must be stated in accordance with 27 CFR 4.37. The standards of fill apply to imported and domestic wine in interstate commerce, but they do not apply to exported wine, or to wine for sale only within a single State (intrastate commerce) pursuant to a certificate of exemption.

Metric standards of fill for wine were first prescribed by Treasury Decision (T.D.) ATF-12 (39 FR 45216, Dec. 31, 1974; corrected at 40 FR 1240, Jan. 7, 1975). The metric standards became mandatory on January 1, 1979. Previous regulations had precribed 16 different sizes for domestic products (including the 15/16 quart size for aperitif wines) and had exempted imports from all size restrictions. In consequence, there was an excessive proliferation of sizes. This was found to be confusing to consumers. One of the purposes of T.D. ATF-12 was to alleviate this confusion.

In accordance with that purpose, ATF has generally denied requests to add new standards of fill, except where there was a strong showing of need. Several previous requests to add a 500 ml wine size were denied. Nevertheless, on two occasions, the standards of fill for wine were amended to allow additional sizes. T.D. ATF-49 (43 FR 19846, May 9, 1978) allowed even-liter sizes larger than 3 liters and exempted containers of 18 liters or more from the standards of fill. T.D. ATF-76 (46 FR 1725, Jan. 7, 1981) added the 50 ml miniature size, which is used primarily for single servings of dessert wine.

Petition for 500 ml Wine Bottle

Under 27 CFR 71.41(c), any interested person may petition ATF for the issuance, amendment, or repeal of a regulation. The petition must give cogent reasons for the proposed action.

On March 27, 1989, a petition was received from Mr. George Vierra, general partner of Merlion Winery, requesting the establishment of a new 500 ml standard of fill for wine. With the petition, there were supporting statements from 52 wineries and 14 distributors. Subsequently, Mr. Vierra submitted 28 additional supporting statements from persons representing 10 wineries and at least 4 distributors.

Further support for Mr. Vierra's proposal was forthcoming from other sources. About 40 persons—mostly consumers—wrote on their own to express support, and several newspapers and magazines published articles in favor of the proposal.

This demonstration of support indicated that there was significant interest in the use of a 500 ml wine bottle. Therefore, on April 4, 1990, ATF published a notice of proposed rulemaking in the **Federal Register** (Notice No. 699, 55 FR 12522), which proposed the addition of a 500 ml standard of fill.

Public Comments

Notice No. 699 requested comments from all interested persons concerning the proposed amendment. In response, 280 comments were filed during the comment period. Of this total, only three were opposed to the proposal. The rest were in favor. After the close of the comment period, but not too late for consideration, seven more comments were received, of which six were in favor and one was opposed.

Those commenters favoring the proposal consisted of 229 consumers, 38 wineries and vineyards, 9 retailers and wholesalers, and 7 others (including 1 bottle manufacturer). The great majority of the comments favoring the proposal were "form letters," sent from many parts of the U.S., reading as follows:

> This letter gives full support to approval of Notice No. 699. The ATF regulation 27 CFR 4.73 should be changed to allow a 500-ml bottle be permitted (sic) in interstate commerce by the BATF. Please expedite this final rule change.

A substantial minority (more than 60) of the comments stated specific reasons, written by the commenters, to explain their support for the proposal. The most common reason (stated by 14 consumers, 7 wineries, 3 U.S. distributors, and 1 foreign exporter) was that a 500 ml bottle would be more appropriate than any currently authorized size for two people to enjoy with a meal. Some of these commenters (eight consumers, one winery, one retailer, and one importer) specifically mentioned the appropriateness of this size in a restaurant setting. A related reason, emphasized by 13 consumers, 6 wineries, 4 distributors, and the foreign exporter, was that the 500 ml size would promote moderation and hence reduce the hazard of "driving while intoxicated." An article by Dan Berger of the Los Angeles Times, submitted by one of the commenters, is instructive in this regard. Mr. Berger wrote:

> California law states that if you are found to have a blood alcohol level of .08 percent, you are considered legally drunk. And the state says if you consume three four-ounce glasses of wine in an hour (length of a standard dinner), you will exceed .08 blood level.

Considering that a 750 ml bottle contains 25.4 ounces, Mr. Berger concluded that drinking half of a 750 ml bottle of wine with dinner "may cause some people to be considered 'legally' drunk."

Another important rationale, advocated by seven consumers, four wineries, an importer, a columnist, and a bottle manufacturer, was that consumers and producers should have freedom of choice to market or purchase the 500 ml size as an additional option. One consumer pressed this argument to the extreme, advocating the elimination of all standards of fill. However, the comments received by ATF in response to Notice No. 633 (52 FR 23685) demonstrate that the overwhelming majority of wine consumers want specific standards of fill. Therefore, in Notice No. 696 (55 FR 3980) the option of eliminating standards of fill was rejected.

Numerous other reasons were cited by commenters in favor of the 500 ml bottle. These included:

—U.S. exporters' markets would be enhanced.
—Limited-production wines could be distributed to 50% more consumers (as compared with the 750 ml bottle).
—Very expensive wines could be offered in a more affordable size.
—Distinctive marketing and bottle appearance would prevent confusion with other sizes.
—The 500 ml size would be appropriate for Americans (who drink less wine than Europeans), and especially for some younger consumers, who are thought to "drink less and drink better.
—Faster aging in the 500 ml bottle than in the 750 ml means that some wines would be ready for consumption sooner.
—Less contact with air would give wines in 500 ml bottles better aging potential, as compared with the 375 ml size.
—For consumers, wine in 375 ml bottles is very expensive on a per-ounce basis.
—For retailers, a smaller investment per case (versus the 750 ml size) would mean more profits and the ability to offer more variety.
—In restaurants, a party of four could buy one 500 ml bottle to share with the appetizer and another, containing a different wine, to enhance the main course.
—Some rare European wines are produced only in the 500 ml size; the new standard of fill would give American consumer access to these wines.

Comments in Opposition

During the comment period, three wine producers submitted comments in opposition to the proposal. They were Joseph E. Seagram & Sons, Inc., Heublein, Inc., and the Clos du Val Wine Company Ltd. They pointed out certain negative impacts of the proposal for producers, distributors, consumers, and the Government. For producers, the main concern was the added expense needed to establish new bottling lines and to handle, warehouse, account for, and advertise the new size. For distributors, the negative impacts foreseen included confusion (as to which size to order or recommend to customers), lack of storage and display space, and advertising expenses. For consumers, the anticipated problems included confusion, lack of demand for a new size, and price increases, resulting in loss of confidence and a bad image for the wine industry. Negative impacts expected for the Government would be the need to spend additional time auditing inventory records, and declining tax revenues if total wine sales should diminish.

After considering these comments, ATF feels that the reasons in favor of the 500 ml size outweigh those adduced against it. ATF has determined that the disadvantages to the Government will be slight or nonexistent. Further, the disadvantages to distributors and consumers, which the opposition commenters anticipated, do not seem to be of great concern to persons actually in those categories, to judge from the comments received in support of the proposal. Finally, the disadvantages to producers did not deter a large number of other wineries from supporting the proposal. Those other wineries apparently felt that the advantages of the proposal would sufficiently offset any disadvantages. ATF notes that the use of the 500 ml bottle size will be at the election of the proprietor.

After the close of the comment period, another comment opposing the proposal was received. This comment, from a wine importer, urged ATF to reject the proposal for the reasons we had cited in our earlier decisions eliminating the 500 ml distilled spirits size and rejecting previous petitions for a 500 ml wine size.

However, as noted in Notice No. 699, there are differences between wine and distilled spirits that support different regulatory treatment. Wine deteriorates more rapidly in an opened bottle, which means that consumers have a greater need to be able to purchase a size that exactly meets their requirements for immediate consumption. Further, distilled spirits bottles come in a greater variety of shapes, which increases the potential for confusion between similar sizes. By contrast, wine bottles generally appear in just a few standard shapes, thus facilitating size comparison. One of the comments supporting the new size included a photograph of a 500 ml wine bottle flanked by a 375 ml bottle and a 750 ml bottle. Each size is readily distinguishable. Therefore, ATF has determined that the reasons for eliminating the 500 ml distilled spirits size are not applicable to wine.

In the denials of previous requests for a 500 ml wine bottle, five reasons were cited, which were: (1) There was no apparent need for this size, since it is fairly close to the authorized 375 ml size. (2) There seemed to be a possibility of consumer deception, due to similarity with the 375 ml bottle. (3) The standards of fill for wine are generally based on the 750 ml size (most other sizes are even fractions or multiples of this basic size to facilitate easy comparison); a 500 ml size would not fit into this pattern. (4) There was no evidence of significant demand for a 500 ml size. (5) ATF opposed any tendency to return to the "size proliferation" that preceded the establishment of metric standards of fill.

After carefully reviewing the evidence submitted in this rulemaking process, ATF has concluded that these reasons should not be followed. With respect to the first reason, evidence was received concerning the deterioration of wine in opened bottles, the dining habits of couples who consume wine with a meal, and the alcohol level required for legal intoxication. This evidence indicates that there is, in fact, a need for the 500 ml wine bottle. The premise of the second reason (that a 500 ml bottle could be easily confused with other authorized sizes) was denied by the majority of those who addressed this issue. ATF is now persuaded that, in the context of the wine industry, there is no significant danger of consumer confusion. With respect to the third reason, although the 500 ml size is not a multiple of 750 ml, it is exactly half the size of the 1 liter bottle and is also an even multiple or fraction of the 50 ml, 100 ml, 1.5 liter, and 3 liter sizes. As for the fourth reason, the large volume of comments favoring the proposal indicates that there is consumer demand for the 500 ml size. Finally, while ATF remains opposed to "size proliferation," the addition of merely one size will not greatly alter the present situation, and there are many good reasons for allowing this limited expansion.

In conclusion, there appears to be significant demand for a 500 ml size, and the arguments against it have been sufficiently rebutted. Therefore, ATF is prescribing this new size.

Effective Date

The Jordan Winery, while supporting the 500 ml size, requested that the effective date of the change be delayed by one year, so that the American wine industry would have adequate time to prepare. The commenter stated, "European producers already have access to the 500 ml glass bottles and could jump into the U.S. market ahead of our own wine producers if we are not protected by a delayed date of activation."

ATF acknowledges that an adequate lead-in time is appropriate. On the other hand, we question whether a full year is needed for this. No other winery raised this issue, and 2K Packaging Enterprises, Inc., (a wine bottle supplier) stated in its comment: "Such a move (i.e. authorizing the 500 ml bottle) would not pose any particular difficulties from a packaging point of view.

Wineries now bottling the 375 ml and 750 ml bottles would not be confronted with any technical problems should they decide to add the 500 ml bottle to (their) program."

Further, other interests besides those of the wineries must be taken into account. American consumers, importers, and retailers would likely favor an immediate effective date. The form letter submitted by so many consumers stated, "Please expedite this rule change."

In T.D. ATF–146 (48 FR 43319), which authorized the 100 ml and 375 ml sizes for distilled spirits, a delay of approximately 3½ months was provided to "permit industry to make the necessary preparations to bottle and market the new sizes." That delay appears to have been adequate. Accordingly, this Treasury decision will become effective 120 days after the date of publication in the **Federal Register.** The effective date is February 20, 1991.

This effective date means that wine bottled in the 500 ml size shall not be entered into interstate commerce until February 20, 1991. However, this will not preclude an American bottler from bottling wine in the 500 ml size for storage on the premises of the bottling facility, prior to February 20, 1991. Further, any American importer may order shipments in this size and hold them in a Customs bonded warehouse until February 20, 1991. Of course, under 27 CFR 4.50, American bottlers must have certificates of label approval prior to bottling. Although certificates of label approval may be issued for 500 ml containers before February 20, 1991, such bottles shall not be removed from the bottling facility or from customs custody prior to that date. Importers and American bottlers are reminded that previously approved labels may be used on 500 ml bottles without resubmission if the only change is in the net contents.

Effect on Other Sizes

In Notice No. 699, AFT specifically requested comments on the impact of the 500 ml bottle on other authorized sizes. Few comments were received on this issue. One winery (Sutter Home) stated that they anticipated no effect on the 187 ml size. Jordan Winery indicated that 750 ml will remain the most important size, but that the 500 ml size will probably replace the 375 ml size, at least for many products. Jos. E. Seagram & Sons, however, noted that the 375 ml size is "well accepted and appreciated by consumers" and requested that neither this size nor the 187 ml size be eliminated. Accordingly, ATF has no plans at this time to consider eliminating any approved wine bottle sizes.

Other Suggestions

Some commenters included suggestions for additional regulatory changes. One proposed that the 500 ml size be allowed only for wines (such as Hungarian Tokay) that have traditionally been sold only in this size. However, this suggestion would not be fair to producers of other kinds of wine who might want to begin using the 500 ml size. Another commenter proposed that ATF allow the 500 ml size only in returnable bottles. However, ATF does not have legal authority to impose such a requirement.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory analysis (5 U.S.C. 603, 604) are not applicable to this final rule, because it will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291 of February 17, 1981, ATF has determined that this final rule is not a major rule since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part

1320, do not apply to this final rule because no requirement to collect information is imposed.

Drafting Information

The principal author of this document is Steve Simon of the Revenue Programs Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, Wine.

Issuance

Accordingly, 27 CFR part 4 is amended as follows:

PART 4—LABELING AND ADVERTISING OF WINE

Paragraph A. The authority citation for part 4 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. B. Section 4.37(b)(1) is revised to read as follows:

§ 4.37 Net contents.

* * * * *

(b) * * *

(1) For the metric standards of fill: 3 liters (101 fl. oz.); 1.5 liters (50.7 fl. oz.); 1 liter (33.8 fl. oz.); 750 ml (25.4 fl. oz.); 500 ml (16.9 fl. oz.); 375 ml (12.7 fl. oz.); 187 ml (6.3 fl. oz.); 100 ml (3.4 fl. oz.); and 50 ml (1.7 fl. oz.).

* * * * *

Par. C. Section 4.73(a) is revised to read as follows:

§ 4.73 Metric standards of fill.

(a) *Authorized standards of fill.* The standards of fill for wine are the following:

3 liters.
1.5 liters.
1 liter.
750 milliliters.
500 milliliters.
375 milliliters.
187 milliliters.
100 milliliters.
50 milliliters.

* * * * *

Signed: September 13, 1990.

Stephen E. Higgins,
Director.

Approved: September 28, 1990.

John P. Simpson,
Acting Assistant Secretary (Enforcement).

[FR Doc. 90-24985 Filed 10-22-90; 8:45 am]

BILLING CODE 4810-31-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2625

Restoration of Terminating and Terminated Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation ("PBGC") is hereby adding a new part 2625 to its regulations relating to certain aspects of section 4047 of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Under ERISA section 4047, the PBGC has authority to restore to ongoing status plans that are being or have been terminated, in any case where PBGC determines that such action is appropriate and consistent with its duties under title IV of ERISA. When PBGC restores a plan, certain incidental legal obligations arise, including various obligations under title IV of ERISA. Title IV is silent, however, as to the interaction of section 4047 and these other provisions. This regulation describes those legal obligations, and provides procedures necessary for the orderly and effective operation of title IV with respect to a restored plan.

EFFECTIVE DATE: October 22, 1990.

FOR FURTHER INFORMATION CONTACT: J. Ronald Goldstein, Senior Counsel, Office of the General Counsel (Code 22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; telephone 202-778-8850. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Background

This document adds to the Pension Benefit Guaranty Corporation's regulations (29 CFR, chapter XXVI) a new part 2625 dealing with certain matters incidental to plan restoration pursuant to section 4047 of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Section 4047 of ERISA authorizes the Pension Benefit Guaranty Corporation ("PBGC") to restore a terminated pension plan whenever the PBGC determines that this action is appropriate and consistent with its duties under title IV of ERISA. In any case in which the PBGC determines that a plan that is being terminated should be restored, it is authorized under section 4047 "to cease any activities undertaken to terminate the plan, and to take whatever action is necessary and within its power to restore the plan to its status prior to the determination that the plan was to be terminated." Similarly, in the case of a plan that has been terminated, PBGC is authorized in any case in which it determines this action to be appropriate and consistent with its duties under title IV, "to take such action as may be necessary to restore the plan to its pretermination status, including, but not limited to, the transfer to the employer or a plan administrator of control of part or all of the remaining assets and liabilities of the plan."

The legislative history of section 4047 of ERISA demonstrates that Congress intended to confer broad authority on the PBGC to control the details of plan restorations. The purpose of section 4047 is explained as follows in the conference report to ERISA (H.R. Conf. Rep. No. 93-1289, 93d Cong., 2d Sess. 378-379:

Restoration of plans

Neither the House bill nor the Senate amendment had any specific provision that procedures against a plan in the termination phase might be abandoned by the corporation if the employer and plan enjoyed a favorable reversal of business trends, or if some other factor made termination no longer advisable.

Under the conference substitute, the corporation may cease any termination activities and do what it can to restore the plan to its former status. As a result, a terminated plan being operated by a trustee as a wasting trust may be restored if, during the period of its operation by the trustee, experience gains or increased funding make it sufficiently solvent. The corporation may, when appropriate, transfer to the employer or plan administrator part or all of the remaining assets and liabilities.

The United States Supreme Court recently upheld the broad authority of the PBGC to restore a pension plan in *PBGC* v. *LTV Corp.* 110 S.Ct. 2668 (1990).

The restoration of a pension plan presents unique problems with respect to the application of certain provisions of title IV of ERISA. For example, all plans covered by the PBGC insurance programs are required to pay annual premiums to PBGC, in accordance with ERISA sections 4006 and 4007. Under section 4007(a) of ERISA, PBGC premiums cease to accrue upon the appointment of a trustee for an underfunded plan being terminated under ERISA sections 4041(c) or 4042. Because a plan that is restored under section 4047 is restored to its pretermination status, upon restoration of a plan, PBGC premiums are owed for the period from the date of trusteeship through restoration (or its implementation). Under the PBGC's premium regulation (29 CFR part 2610), which prescribes the rules for determining and paying the premiums, premiums for a plan year are due and